required or the filing in substitution thereof of appropriate information of comparable character. The Commission may also by informal written notice require the filing of other information in addition to, or in substitution for, the interim information herein required in any case where such information is necessary or appropriate for an adequate presentation of the financial condition of any person for which interim financial information is required, or whose financial information is otherwise necessary for the protection of investors.

[46 FR 12489, Feb. 17, 1981, as amended at 50 FR 25215, June 18, 1985; 50 FR 49533, Dec. 3, 1985; 57 FR 45293, Oct. 1, 1992; 64 FR 73401, Dec. 30, 1999]

PRO FORMA FINANCIAL INFORMATION

AUTHORITY: Secs. 210.11–01 to 210.11–03 issued under secs. 7 and 19a of the Securities Act, 15 U.S.C. 77g, 77s(a), 77aa(25)(26); secs. 12, 13, 14, 15(d), and 23(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78*l*, 78m, 78n, 78o(d), 78w(a); secs. 5(b), 10(a), 14, 20(a) of the Public Utility Holding Company Act, 15 U.S.C. 79e(a), 79n, 79t(a); secs. 8, 20, 30, 31(c), 38(a) of the Investment Company Act of 1940, 15 U.S.C. 80a–8, 80a–20, 80a–29, 80a–30(c), 80a–37(a).

SOURCE: Sections 210.11–01 to 210.11–03 appear at 47 FR 29837, July 9, 1982, unless otherwise noted.

§ 210.11–01 Presentation requirements.

(a) Pro forma financial information shall be furnished when any of the following conditions exist:

(1) During the most recent fiscal year or subsequent interim period for which a balance sheet is required by § 210.3–01, a significant business combination accounted for as a purchase has occurred (for purposes of these rules, the term ''purchase'' encompasses the purchase of an interest in a business accounted for by the equity method);

(2) After the date of the most recent balance sheet filed pursuant to § 210.3–01, consummation of a significant business combination to be accounted for by either the purchase method or pooling-of-interests method of accounting has occurred or is probable;

(3) Securities being registered by the registrant are to be offered to the security holders of a significant business to be acquired or the proceeds from the offered securities will be applied directly or indirectly to the purchase of a specific significant business;

(4) The disposition of a significant portion of a business either by sale, abandonment or distribution to shareholders by means of a spin-off, split-up or split-off has occurred or is probable and such disposition is not fully reflected in the financial statements of the registrant included in the filing;

(5) During the most recent fiscal year or subsequent interim period for which a balance sheet is required by § 210.3–01, the registrant has acquired one or more real estate operations or properties which in the aggregate are significant, or since the date of the most recent balance sheet filed pursuant to that section the registrant has acquired or proposes to acquire one or more operations or properties which in the aggregate are significant.

(6) Pro forma financial information required by § 229.914 is required to be provided in connection with a roll-up transaction as defined in § 229.901(c).

(7) The registrant previously was a part of another entity and such presentation is necessary to reflect operations and financial position of the registrant as an autonomous entity; or

(8) Consummation of other events or transactions has occurred or is probable for which disclosure of pro forma financial information would be material to investors.

(b) A business combination or disposition of a business shall be considered significant if:

(1) A comparison of the most recent annual financial statements of the business acquired or to be acquired and the registrant's most recent annual consolidated financial statements filed at or prior to the date of acquisition indicates that the business would be a significant subsidiary pursuant to the conditions specified in § 210.1–02(w), substituting 20 percent for 10 percent each place it appears therein; or

(2) The business to be disposed of meets the conditions of a significant subsidiary in § 210.1–02(w).

(c) The pro forma effects of a business combination need not be presented pursuant to this section if separate financial statements of the acquired business are not included in the filing.

(d) For purposes of this rule, the term business should be evaluated in light of the facts and circumstances involved and whether there is sufficient continuity of the acquired entity's operations prior to and after the transactions so that disclosure of prior financial information is material to an understanding of future operations. A presumption exists that a separate entity, a subsidiary, or a division is a business. However, a lesser component of an entity may also constitute a business. Among the facts and circumstances which should be considered in evaluating whether an acquisition of a lesser component of an entity constitutes a business are the following:

(1) Whether the nature of the revenue-producing activity of the component will remain generally the same as before the transaction; or

(2) Whether any of the following attributes remain with the component after the transaction:

(i) Physical facilities,

(ii) Employee base,

(iii) Market distribution system,

(iv) Sales force,

(v) Customer base,

(vi) Operating rights,

(vii) Production techniques, or

(viii) Trade names.

(e) This rule does not apply to transactions between a parent company and its totally held subsidiary.

[47 FR 29837, July 9, 1982, as amended at 50 FR 49533, Dec. 3, 1985; 56 FR 57247, Nov. 8, 1991; 61 FR 54514, Oct. 18, 1996]

§ 210.11–02 Preparation requirements.

(a) *Objective.* Pro forma financial information should provide investors with information about the continuing impact of a particular transaction by showing how it might have affected historical financial statements if the transaction had been consummated at an earlier time. Such statements should assist investors in analyzing the future prospects of the registrant because they illustrate the possible scope of the change in the registrant's historical financial position and results of operations caused by the transaction.

(b) *Form and content.* (1) Pro forma financial information shall consist of a pro forma condensed balance sheet, pro forma condensed statements of income, and accompanying explanatory notes. In certain circumstances (i.e., where a limited number of pro forma adjustments are required and those adjustments are easily understood), a narrative description of the pro forma effects of the transaction may be furnished in lieu of the statements described herein.

(2) The pro forma financial information shall be accompanied by an introductory paragraph which briefly sets forth a description of (i) the transaction, (ii) the entities involved, and (iii) the periods for which the pro forma information is presented. In addition, an explanation of what the pro forma presentation shows shall be set forth.

(3) The pro forma condensed financial information need only include major captions (i.e., the numbered captions) prescribed by the applicable sections of this Regulation. Where any major balance sheet caption is less than 10 percent of total assets, the caption may be combined with others. When any major income statement caption is less than 15 percent of average net income of the registrant for the most recent three fiscal years, the caption may be combined with others. In calculating average net income, loss years should be excluded unless losses were incurred in each of the most recent three years, in which case the average loss shall be used for purposes of this test. Notwithstanding these tests, *de minimis* amounts need not be shown separately.

(4) Pro forma statements shall ordinarily be in columnar form showing condensed historical statements, pro forma adjustments, and the pro forma results.

(5) The pro forma condensed income statement shall disclose income (loss) from continuing operations before nonrecurring charges or credits directly attributable to the transaction. Material nonrecurring charges or credits and related tax effects which result directly from the transaction and which will be included in the income of the